THE MYSORE SALES OF MOTOR SPIRIT TAXATION ACT, 1957.

ARRANGEMENT OF SECTIONS

Sections

1. Short title, extent and commencement.
2. Definitions.
3. Payment of tax.
4. Registration of Dealers.
5. Collection of tax by dealers.
6. Obligation of dealers to keep books of account and submit returns.
7. Receipt for payment of tax to be furnished along with return.
8. Determination of Tax by the Commercial Tax Officer in certain cases and recovery thereof.
9. Powers of entry and inspection.
10. Penalties.
11. Motor Spirit liable to confiscation in certain cases.
12. Confiscation how ordered.
13. Issue of warrants for arrest.
14. Powers of entry and search without warrant.
15. Offences to be reported, etc.
16. Power of investigation.
17. Offences to be bailable.
18. Procedure on seizure.
19. Power to compound offences.
20. Cognizance of offences.
21. Bar of certain proceedings.
22. Limitation for certain suits and prosecutions.
23. Appeal.
24. Appeal to the Sales Tax Appellate Tribunal.
25. Revision.
26. Appeal to the High Court.
27. Power to make rules.
28. Repeal and savings.
29. Power to remove difficulties.

MYSORE ACT No. 20 OF 1957

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THE MYSORE SALES OF MOTOR SPIRIT TAXATION ACT, 1957.

(*Received the assent of the Governor on the Nineteenth day of July* 1957).

(As amended by Act 2 of 1960 and Act 19 of 1965)

An Act to consolidate and amend the law providing for the levy of a tax on sale of motor spirit in the State of Mysore.

WHEREAS it is expedient to consolidate and amend the law providing for the levy of a tax on sales of motor spirit in the State of Mysore ;

BE it enacted by the Mysore State Legislature in the Eighth Year of the Republic of India as follows :—

1. *Short title, extent and commencement.*—(1) This Act may be called the Mysore Sales of Motor Spirit Taxation Act, 1957.

(2) It extends to the whole of the State of Mysore.

(3) This Section shall come into force at once, and the rest of *this Act shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. *Definitions.*—(1) In this Act, unless the context otherwise requires,—

(*a*) "dealer" means any person who carries on the business of selling, supply or distributing motor spirit, directly or otherwise, whether for cash or deferred payment or for other valuable consideration ;

(*b*) "motor spirit" means any substance which by itself or in admixture with other substances is ordinarily used directly or indirectly to provide reasonably efficient fuel for automotive or stationary internal combustion engines, and includes petrol, diesel oil and other internal combustion oils, but does not include kerosene, furnace oil, coal or charcoal ;

*This Act has come into force on the 1st October 1957.

(*c*) "petrol" means dangerous petroleum as defined in the Petroleum Act, 1934 (Central Act XXX of 1934), and includes a mixture of power alcohol, as defined in the Indian Power Alcohol Act, 1948 (Central Act XXII of 1948), and petrol;

(*d*) "prescribed" means prescribed by rules made under this Act;

(*e*) "sale" with all its grammatical variations and cognate expressions means every transfer of property in motor spirit by one person to another in the course of trade or business for cash or deferred payment or other valuable consideration;

Explanation.—A sale of motor spirit by a co-operative society, or a club, a firm or any association to one of its members for consumption is a sale within the meaning of clause (*e*);

(*f*) "year" means the financial year.

(2) The Mysore General Clauses Act, 1899 (Mysore Act No. III of 1899), shall apply for the interpretation of this Act as it applies for the interpretation of a Mysore Act.

3. *Payment of tax.*—(1) Subject to the provisions of this Act, there shall be levied on every first sale of motor spirit effected in the State of Mysore, a tax—

[1][in the case of petrol—at the rate of nine naye paise per litre, and]

in the case of motor spirit other than petrol—at the rate of [2][eight paise per litre ;]

and such tax shall be payable by the dealer effecting such sale :

Provided that the burden of proving that a transaction is not liable to taxation under this section shall be on the dealer.

(2) No tax shall be levied under this Act on the sale of any motor spirit in respect of which such tax has already been paid.

4. *Registration of dealers.*—(1) No person shall carry on business in motor spirit as a dealer at any place in the State of Mysore unless he has been registered as such under this Act.

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1. Substituted by Mysore Act 11 of 1960.

2. Substituted by Mysore Act 19 of 1965 and operative from 1st January 1966 (*vide* Notification No. FD 401 CSL 65, dated 10th December 1965).

(2) No dealer shall use or transfer for consumption any motor spirit stocked by him without its being included in his account and in the next return of retail sales submitted by him under section 6 (b).

(3) Application for registration as a dealer under this Act shall be made in such form, to such authority as may be prescribed, within such period, and accompanied by such fee not exceeding six rupees as may be prescribed.

(4) Registration may be made subject to such conditions, if any, as may be prescribed including the furnishing of such security as the registering authority may consider necessary to ensure the due payment of the tax which may from time to time be payable by the dealer.

(5) No person including a company or firm registered as dealer who is liable to pay tax under this Act, shall carry on the business of Public Transport requiring the use of motor spirit.

(6) Any registration under sub-section (1) may be suspended or cancelled by such authority, for such reasons, and in such manner as may be prescribed.

(7) Every dealer shall renew his registration every year on paying a fee prescribed for registration.

5. *Collection of tax by dealers.*—(1) No person other than a registered dealer liable to the payment of tax under this Act shall collect any amount by way of tax; nor shall such registered dealer make any such collection except in accordance with such conditions and restrictions as may be prescribed.

(2) If any person collects any amount by way of the tax in contravention of the provisions of sub-section (1) or if any registered dealer collects any amount by way of the tax in excess of the amount payable by him, the amounts so collected shall, without prejudice to any prosecution that may be instituted against such person or dealer for any offence under this Act, stand forfeited to the State Government, and such person or dealer, as the case may be, shall, within the prescribed period, pay such amount into a Government treasury and in default of such payment, the amount shall be recovered as an arrear of land revenue.

6. *Obligation of dealers to keep books of account and submit returns.*—Every dealer in motor spirit shall, in respect of each place where he carries on business—

(*a*) keep books of account in the prescribed form; and

(*b*) submit every month to the Commercial Tax Officer and

to such other officers as may be prescribed a return in the prescribed form and before the prescribed date, showing—

(i) the quantity of motor spirit received by him during the preceding month ;

(ii) the quantity sold by him during such month ; and

(iii) such other particulars as may be prescribed.

7. *Receipt for payment of tax to be furnished along with return.*—Along with the return referred to in clause (*b*) of section 6, every dealer liable to pay tax under this Act, shall furnish a receipt from a Government treasury for the amount of the tax due in respect of the motor spirit sold by him during the preceding month, according to the return.

8. *Determination of tax by the Commercial Tax Officer in certain cases and recovery thereof.*—(1) If no return is submitted by a dealer under clause (*b*) of section 6 in respect of any month before the date prescribed in that behalf, or if the return is submitted without a receipt for the full amount of the tax due as required by section 7, or if the return submitted appears to the Commercial Tax Officer to be incorrect or incomplete, the Commercial Tax Officer shall, after making such inquiry as he considers necessary, determine the amount of the tax, if any, due from such dealer in respect of such month and the amount so determined less the sum, if any, already paid by him shall be paid by the dealer into Government treasury within fourteen days after remand is made therefor :

Provided that before taking action under this sub-section, the dealer shall be given a reasonable opportunity of proving the correctness and completeness of his return.

(2) In default of payment within the period aforesaid the amount of tax due shall be recovered from the person from whom the tax is due as if it were an arrear of land revenue.

9. *Powers of entry and inspection.*—(1) All accounts and vouchers relating to stocks, purchases, sales and deliveries of motor spirit kept by dealers and the stocks of motor spirit with them shall be open to inspection by such officers as the State Government may authorise in that behalf.

(2) Any such officer shall have power to enter and search any building, vessel, vehicle or place where any dealer carries on business or keeps any stock of motor spirit.

10. *Penalties.*—Any person who—

(*a*) carries on business in motor spirit as dealer without getting himself registered as required by sub-section (1) of section 4 or when his registration is not in force, or

(*b*) collects any amount by way of tax under this Act, in contravention of sub-section (1) of section 5 or fails to pay the amounts specified in sub-section (2) of section 5, within the prescribed time, or

(*c*) fails to keep books of account as required by clause (*a*) of section 6 or

(*d*) fails to submit any return as required by clause (*b*) of section 6 on or before the prescribed date, or submits an incorrect or incomplete return, or fails to submit a receipt for the full amount of the tax due as required by section 7, or

(*e*) fails to pay within the time allowed, any tax demanded from him under sub-section (1) of section 8, or

(*f*) fraudulently evades the payment of any tax due under this Act, or

(*g*) acts in contravention of any of the provisions of this Act,

shall, on conviction by a Magistrate of the first class, be liable to a fine which may extend to one thousand rupees and in the case of a conviction under clause (*e*) or (*f*), the Magistrate shall specify in his judgment the amount of the tax which the person convicted has failed or evaded to pay and the amount so specified shall be recoverable as if it were a fine.

11. *Motor spirit liable to confiscation in certain cases.*—The motor spirit in respect of which an offence against this Act is committed and any receptacle in whcih such spirit is contained shall be liable to confiscation.

12. *Confiscation how ordered.*—(1) When in any case tried by a Magistrate, the Magistrate decides that anything is liable to confiscation under section 11, he may, after hearing the person, if any claiming any right thereto and the evidence, if any, which he produces in support of his claim, order confiscation or may give the owner an option to pay such fine as the Magistrate deems fit in lieu of confiscation.

(2) When an offence against this Act has been committed but the offender is not known, or cannot be found, or when anything liable to confiscation under this Act and not in the possession of any

person cannot be satisfactorily accounted for, the case shall be inquired into and determined by the prescribed officer who may order such confiscation :

Provided that no such order shall be made until the expiration of one month from the date of seizure of the things intended to be confiscated or without hearing the persons, if any, claiming any right thereto, and the evidence, if any, which they produce in support of their claims.

13. *Issue of warrants for arrest.*—(1) Any officer of the State Government specially empowered by it in this behalf may issue a warrant for the arrest of any person whom he has reason to believe to have committed an offence against this Act.

(2) All warrants issued under this section shall be executed in accordance with the provisions of the Code of Criminal Procedure 1898 (Central Act V of 1898), by a police officer, or if the officer issuing the warrant deems fit, any other person.

14. *Power of entry and search without warrant.*—(1) Any officer of the State Government specially empowered by it in this behalf may—

(*a*) enter and search any building, vessel, vehicle or place in which he has reason to believe that any motor spirit liable to confiscation under this Act is kept or concealed;

(*b*) seize any motor spirit and any receptacle which he has reason to believe to be liable to confiscation under this Act ; and

(*c*) detain, search and arrest any person whom he has reason to believe to be guilty of any offence against this Act.

(2) The provisions of section 61 of Code of Criminal Procedure, 1898 (Central Act V of 1898), shall apply to all arrests without warrant made under sub-section (1).

15. *Offences to be reported, etc.*—Every officer employed by the State Government or by any local body shall be bound to give immediate information at the nearest police station, or to the nearest officer of Commercial Taxes Department, of all breaches of any of the provisions of this Act which may come to his knowledge ; and all such officers shall be bound to take all reasonable measures in their power to prevent the commission of any such breaches which they may know or have reason to believe are about or likely to be committed.

16. *Power of investigation.*—(1) Every Officer of the Commercial Taxes, or Police Departments not below such ranks as may be prescribed, shall, within the area for which he is appointed, have power to investigate all offences against this Act.

(2) Every such officer shall, in the conduct of such investigation, exercise the powers conferred by the Code of Criminal Procedure, 1898 (Central Act V of 1898), upon an officer in charge of a police station for the investigation of a cognizable offence :

Provided that if such officer is of opinion that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of an accused to a Magistrate, or that the person arrested may be discharged with a warning such officer shall release him on his executing a bond, with or without sureties, to appear if and when so required before a Magistrate and shall make a full report of the case to the Commercial Tax Officer.

17. *Offences to be bailable.*—(1) All offences against this Act shall be bailable.

(2) Any officer empowered under section 16 shall have power to grant bail in accordance with the provisions of the Code of Criminal Procedure, 1898 (Central Act V of 1898), to any person arrested without warrant for an offence against this Act.

18. *Procedure on seizure.*—When anything has been seized by an officer exercising powers under section 16, such officer, after such inquiry as he considers necessary—

(*a*) if it appears that such thing is required as evidence in the case of any person arrested, shall forward the thing to the Magistrate to whom such person is forwarded or for his appearance before whom bail has been taken ;

(*b*) if it appears that such thing is liable to confiscation but is not required as evidence as aforesaid, shall send the thing with a report of the particulars of the seizure to the prescribed authoriy ; and

(*c*) if no offence appears to have been committed, shall return the thing to the person from whose possession it was taken and shall report to the prescribed authority accordingly.

19. *Power to compound offences.*—(1) The prescribed authority may accept from any person who has committed or is reasonably suspected of having committed an offence against this Act, by way of composition of such offence—

(*a*) where the offence consists of a sale of motor spirit in contravention of this Act or of the evasion of any tax

payable under this Act, in addition to the tax payable by him under section 3, a sum of money not exceeding five hundred rupees or double the amount of the tax payable, whichever is greater ; and

(*b*) in other cases, a sum of money not exceeding five hundred rupees.

(2) On the payment of such sum of money and the tax, if any, payable under section 3, to the prescribed authority, the accused person shall be discharged, the property seized, if any, shall be released and no further proceedings shall be taken against such person or property in respect of such offence.

20. *Cognizance of offences.*—(1) No Magistrate shall take cognizance of any offence against this Act—

(i) except upon the complaint or report of the Commercial Tax Officer or other prescribed authority ; or

(ii) except upon his own knowledge or suspicion.

(2) Except with the sanction of the State Government, no Magistrate shall take cognizance of any offence against this Act, unless the prosecution is instituted within six months from the date on which the offence is alleged to have been committed :

Provided that nothing contained in this sub-section shall apply to any case governed by section 22.

21. *Bar of certain proceedings.*—(1) No suit, prosecution or other proceedings shall lie against any officer or servant of the State Government, for any act done or purporting to be done under this Act, without the previous sanction of the State Government.

(2) No officer or servant of the State Government shall be liable in respect of any such act in any civil or criminal proceeding, if the act was done in good faith in the course of the execution of duties or he discharge of functions imposed by or under this Act.

22. *Limitation for certain suits and prosecutions.*—No suit shall be instituted against the State Government and no suit prosecution or other proceeding shall be instituted against any officer or servant of the State Government in respect of any act done or purporting to be done under this Act, unless the suit, prosecution or other proceeding is instituted within six months from the date of the act complained of.

23. *Appeal.*—(1) Any person aggrieved by any order passed under this Act, not being an order passed by any Court or Magistrate, may appeal—

(*a*) in case such order is passed by a Commercial Tax Officer to the Deputy Commissioner of Commercial Taxes and

(*b*) in any other case, to the Commercial Tax Officer.

(2) The appellate authority may, after giving the appellant an opportunity of being heard, pass such orders on the appeal as such authority thinks fit.

(3) Every order passed in appeal under this section shall, subject to the provisions of sections 24 to 26, be final.

24. *Appeal to the Sales Tax Appellate Tribunal.*—(1) Any person aggrieved by an appellate order under section 23, may within such time as may be prescribed, appeal to the Appellate Tribunal appointed under section 4 of the Mysore Sales Tax Act, 1957.

(2) The Appellate Tribunal may, after giving an opportunity to the parties of being heard, pass such orders on the appeal as it thinks fit.

25. *Revision.*—The Commissioner of Commercial Taxes may, *suo motu* call for and examine the record of any order passed or any proceedings recorded under the provisions of this Act by any officer or person subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such order, or as to the regularity of such proceedings and may pass such order in reference thereto as he thinks fit.

26. *Appeal to the High Court.*—(1) Any person aggrieved by an order of the Commissioner of Commercial Taxes under section 25 may, within such time as may be prescribed, appeal to the High Court.

(2) The High Court may, after giving an opportunity to the parties of being heard, pass such orders on the appeal as it thinks fit.

27. *Power to make rules.*—(1) The State Government may, subject to the condition of previous publication, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(*a*) all matters expressly required or allowed by this Act to be prescribed;

(*b*) the regulation of the sale of motor spirit for the purpose of enforcing the provisions of this Act;

(*c*) the duties and powers of inspecting and other officers appointed or authorised to exercise any powers under this Act, and the procedure to be followed by such officers;

(*d*) the form in which and the time within which appeals under section 23 may be preferred;

(*e*) the levy of tax under this Act on any sale which has escaped the levy and the period within which such levy may be made not exceeding five years;

(*f*) the rectification of mistakes apparent from the record of any proceedings relating to the levy of tax, appeal or revision and the period within which such rectification may be made; and

(*g*) any other matter for which there is no provision or no sufficient provision in this Act and for which provision is, in the opinion of the State Government, necessary for giving effect to the purposes of this Act.

(3) In making a rule under sub-section (1) or sub-section (2) the State Government may provide that a breach thereof shall be punishable with fine which may extend to one thousand rupees and where the breach is a continuing one, with further fine which may extend to fifty rupees for every day after the first during which the breach continues.

(4) All rules made under this Act shall be laid, as soon as may be, after they are made, before the State Legislative Assembly while it is in session for a total period of one month which may be comprised in one session or in two or more sessions and if, before the expiry of the said period, the State Legislative Assembly makes any modification in the rules or directs that any rule shall not have effect, the rules shall thereafter have effect only in such modified form or be of no effect, as the case may be.

28. *Repeal and Savings.*—The Madras Sales of Motor Spirit Taxation Act, 1939 (Madras Act VI of 1939), as in force in the Madras Area, the Mysore Motor Spirit (Taxation on Sales) Act, 1949 (Mysore Act XLIX of 1949), as in force in the Mysore Area, the Hyderabad Sales of Motor Spirit Taxation Regulation, 1358 F. (Hyderabad Act XXIV of 1358 F.), as in force in the Hyderabad Area, the Bombay Sales of Motor Spirit Taxation Act, 1946 (Bombay

Act VI of 1946), as in force in the Bombay Area and the Coorg Sales of Motor Spirit Taxation Act, 1940 (Coorg Act IX of 1940), are hereby repealed :

Provided that such repeal shall not affect—

(*a*) the previous operation of the said enactments or anything duly done or suffered thereunder ; or

(*b*) any right, privilege, obligation or liability acquired, accrued or incurred under the said enactments ; or

(*c*) any penalty, forfeiture or punishment incurred in respect of any offence committed against the said enactments ; or

(*d*) any investigation, legal proceeding (including assessment proceeding) or remedy in respect of any such right, privilege, obligation, liability, forfeiture or punishment aforesaid and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forefeiture or punishment may be imposed as if this Act had not been passed.

29. *Power to remove difficulties.*—(1) If any difficulty arises in giving effect to the provisions of this Act in consequence of the transition to the said provisions from the provisions of the Acts in force immediately before the commencement of this Act, the State Government may, by notification in the Official Gazette, make such provisions as appear to it to be necessary or expedient for removing the difficulty.

(2) If any difficulty arises in giving effect to the provisions of this Act (otherwise than in relation to the transition from the provisions of the Acts in force before the commencement of this Act), the State Government may, by notification, make such provisions, not inconsistent with the purposes of this Act, as appear to it to be necessary or expedient for removing the difficulty.